**##
Application Decision**

**By Richard Holland**

**Appointed by the Secretary of State for Environment, Food and Rural Affairs**

Decision date: 29 September 2021

**Application Ref: COM/3270067**

**St Catherine’s Hill, Surrey**

Register Unit No: CL 406

Commons Registration Authority: Surrey County Council

\* The application, dated 1 March 2021, is made under Section 38 of the Commons Act 2006 (‘the 2006 Act’) for consent to carry out restricted works on common land.

\* The application is made by Network Rail Infrastructure Limited.

\* The works comprise (i) temporary fencing covering approximately 3000 m², encapsulating and protecting a re-seeded area following earlier use as a site compound which facilitated the re-grade of the railway cutting (ii) permanent installation of underground soil nails (iii) permanent repositioning of the palisade fence around the mouth of the railway cutting extending the original fence line by approximately 14 m (iv) widening of the access track at variable distances between 30 – 40 cm.

##
Decision

1.Consent is granted for the works in accordance with the application dated 1 March 2021 and accompanying plans subject to the condition that the repositioned fencing shall be reduced to 1.8 m in height and painted green (Moss Green/British Racing Green – RAL 6005).

2. For the purposes of identification only the location of the works is outlined in red and the access track in blue on the attached plans.

Preliminary matters

3.The application is retrospective as the works have taken place. Since making the application, the applicant has agreed to reduce the height of the palisade fencing to 1.8 m and change its colour to Moss Green/British Racing Green – RAL 6005. I have taken this into account in deciding the application and I do not consider that any interested parties will be prejudiced by the amendments.

4.I have had regard to Defra’s Common Land Consents Policy (Defra November 2015) in determining this application under section 38, which has been published for the guidance of both the Planning Inspectorate and applicants. However, every application will be considered on its merits and a determination will depart from the policy if it appears appropriate to do so. In such cases, the decision will explain why it has departed from the policy.

5.This application has been determined solely on the basis of written evidence.

6.I have taken account of the representations made by Natural England (NE), the Open Spaces Society (OSS), Historic England (HE), the Guildford Society and St Catherine’s Village Association.

7.I am required by section 39 of the 2006 Act to have regard to the following in

determining this application:

\* the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);

\* the interests of the neighbourhood;

\* the public interest. (Section 39(2) of the 2006 Act provides that the public interest includes the public interest in; nature conservation; the conservation of the landscape; the protection of public rights of access to any area of land; and the protection of archaeological remains and features of historic interest);

\* and any other matter considered to be relevant.

Reasons

*The interests of those occupying or having rights over the land*

8.The landowner, Guildford Borough Council, has been consulted about the application and has not objected. Rights of pasture, pannage, piscary, estovers and turbary are registered over the land. The applicant confirms that the rights are not exercised. There is no indication that the works have had, or will have, any adverse impact on the interests of those occupying or having rights over the land.

*The interests of the neighbourhood and protection of public rights of access*

9.The interests of the neighbourhood test relates to whether the works unacceptably interfere with the way the common land is used by local people. The applicant explains that following a failure of the Guildford Sands tunnel cutting in December 2019, a landslip resulted which required the regrading and stabilisation of the face of the cutting using soil nails. The regrade required the repositioning and extension of an existing palisade fence, increasing the area of common contained within the fence by 484.5 m². The works included temporary fencing to protect and support re-vegetation until September 2021. To facilitate access to the work site the access track was widened. The applicant is of the view that the access widening has improved the condition of the track and access to nearby residential properties.

10.The OSS points out that the common is subject to public rights of air and exercise under section 193 of the Law of Property Act 1925; it should be made clear that the fencing will exclude public access and stated in any consent. The applicant comments that it is not in the interests of public safety to permit access onto the common land inside the repositioned fence. The landslip incident resulted in a decrease of the safety distance from the original fencing to the edge of the affected cutting. The repositioned and extended fencing is required to maintain the safety zone to protect the public.

11.I note that the temporary works were needed to restore the common and were scheduled to be removed in early September 2021. I am satisfied that the widening of the track, which is now around 2.6 m wide, is intended to improve access. I conclude that while the extended and repositioned palisade fencing will exclude the public from a relatively small area of common (less than 3% of the total common), any limited impact on the public’s use of the common is outweighed by the need to protect public safety.

*The public interest*

*Nature conservation*

12.NE commented that whilst the project will affect accessibility for a period of time it will return the common to a “vegetated state” which will be safe for the public to enjoy. NE has not objected to the application and I am satisfied that the works will not harm nature conservation interests.

*Conservation of the landscape*

13.The common is located within the Surrey Hills Area of Outstanding Natural Beauty (AONB). The applicant explains that the temporary fencing will be removed by 1 September 2021. To restore the common, the former compound and working area have been reseeded and shrubs planted. The length of palisade fencing has been increased from 104.5 m to 118.5 m. There has been no change to the type of fencing on the common. The applicant explains that the mouth of the cutting requires the highest level of security as railway tunnel portals are considered high risk suicide locations. Palisade fencing is the most appropriate as its design reduces the risk of unauthorised access on to the railway.

14. Among concerns raised were the visual impact of the permanent works, particularly the repositioning and extension of the palisade fencing, on the protected landscape. In response the applicant explains that the height of the fencing will be reduced from 2.4 m to 1.8 m and the colour changed to green to mitigate the visual impact. The applicant adds that, following discussions with Guildford Borough Council, it was considered that the additional planting of trees and shrubs on the common land side of the fence would further restrict views and reduce the area available for public use and, due to a compacted stone path, it has not been possible to replant trees on the railway side of the fence. The cutting has been reseeded and light vegetation is expected to grow and mitigate the visual impact.

15. I am satisfied that the visual impact of the temporary works was of short duration. I accept that the underground works, which will not be visible, are needed to stabilise the land and prevent future landslip; thereby maintaining this part of the common. The parties have submitted photographs of the fencing. However, I note that the application does not seek to change the type of fencing already on the common and the short 14 m extension matches the existing fencing. I consider that the mitigation measures, which can be secured by way of a condition to the consent, will reduce the impact of the repositioned and extended fencing on the visual amenity of the common. I further consider that the reseeding/growth in vegetation will help improve the appearance of the working area and the condition of the widened access track in the long term. While the palisade fencing will do little to conserve the natural beauty of the AONB (even when painted green and reduced in height), safeguarding public safety outweighs this concern.

*Archaeological remains and features of historic interest*

16.HE advised that it did not consider that the proposal would harm any highly designated assets in the vicinity and did not object, however it suggested that all staff working within the area are advised of the presence of the Scheduled Monument of St Catherine’s Chapel (HA UID 1005953) and that Surrey County Council is consulted regarding the impact on undesignated archaeological remains and historic features and to advise on an appropriate archaeological mitigation strategy where required. In response the applicant confirms that staff working in the area were advised of the presence of the Scheduled Monument and Surrey County Council was consulted about the works.

17.Interested parties are concerned about the impact of the permanent works on the setting of the Scheduled Monument. However, I note that HE confirmed its support of the mitigation measures proposed by the applicant (set out at paragraph 14 above) and concurred that the addition of trees and shrubs could have a detrimental effect on the views of the chapel. I am satisfied that the works will not harm archaeological remains and features of historic interest.

**Other matters**

18.The parties refer to works that are not included in this application (e.g. handrails and the restoration of a bund). However, I am only able take into consideration works which form part of the application before me.

##

Conclusion

19.I am satisfied that any limited impact on public rights of access or the landscape is outweighed by the requirement to stabilise the cutting and secure public safety. Consent is granted for the works subject to the condition at paragraph 1.

Richard Holland